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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,290	06/14/2005	Thomas L. Haschen	4845-0101PUS2	3643
2292	7590	09/19/2007		
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
			EXAMINER MAHAFKEY, KELLY J	
			ART UNIT 1761	PAPER NUMBER
			NOTIFICATION DATE 09/19/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/530,290

Applicant(s)

HASCHEN ET AL.

Examiner

Kelly Mahafkey

Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 06 August 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 84-97 and 99-122.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Lien Tran/
Primary Examiner
Group 1700

Continuation of 5. Applicant's amendments have overcome the following rejection(s): (1) 112 1st Paragraph Rejection of claims 96, 106, 110, 116, and ; (2) 112 2nd paragraph rejection of claims 84, 86, 103, 105, 109, 112, 114, 115, 119-121 due to the phrase "an empirical relationship"; (3) 112 2nd paragraph rejection of claim 98; and (4) 112 2nd paragraph rejection of claims 87, 89, 90, 96, 106, 110, 116, 122 due to the recitation "wet by products soluble nutrient source mixture".

Applicant's arguments regarding the following 112 2nd paragraph rejections have been considered but are not deemed persuasive. Applicant's arguments have been addressed in the previous office actions.

Claims 87, 89, 90, 96, 106, 108-111, 116, and 119-121 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 116, and 122 recites the limitation "starting by product solubles nutrient source mixture". There is insufficient antecedent basis for this limitation in the claim. The independent claims from which these claims depend on do not recite the specific mixtures as claimed; the independent claims recite "by-product solubles nutrient source mixture", however it is unclear at which part of the instantly claimed process the "starting" mixture is produced.

Claims 87, 89, 90, 96, 106, 110, 116, and 122 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps. The claims refer to increasing the nutrient values of a source mixture, however, they do not refer to the method by which this is done. Thus, it is unclear in these method claims in which step of the independent claim an increased nutrient value is achieved. For example, it is unclear in claim 87 if the nutrient increase is achieved in step a of claim 84, step b of claim 84, or in some other undisclosed step.

Claims 109-111 and 119-122 are indefinite. The claims recite a system for predictably enhancing nutrient value, a system for determining means, a system for mixing, and a system adjusting means. It is unclear as to what apparatus are associated with the "systems". For example, it is unclear as to what kind of apparatus is necessary for "a system for determining means for determining the desirable levels of crude protein [in the feed composition]...". It is unclear if the system is based on personal observation of the animal for which the feed is to be feed; it is unclear if the system is based on chemical observation of the animal to which the feed is to be feed, ect.

Applicant's arguments regarding the 103(a) rejection of claims 84-97 and 99-122 have been considered but are not deemed persuasive. Applicant's arguments, specifically regarding predictably enhancing nutrient feed, determining desirable nutrient levels, forming a nutrient source mixture of soybean meal and fermenters byproducts, and the claimed empirical formula have been addressed in the previous office actions.

It is noted that applicant states, "the Office Action does not even address this specific positively recited feature of adjusting UIP as a percent of the crude protein according to a specific recited formula" on Page 27 of the after final remarks filed 9/5/07. Applicant is referred to page 6 of the final office action mailed 4/5/07 and pages 7-9 of the non final office action mailed 11/14/06, both of which address the positively recited formula of adjusting UIP as a percent of crude protein. Applicant's comment is not well taken as the claimed issue has clearly been addressed in the previous office actions.

The rejections are maintained for the reasons of record as set forth in the final office action.

